

Part 3 Rulemaking Procedures

63G-3-301 Rulemaking procedure.

- (1) An agency authorized to make rules is also authorized to amend or repeal those rules.
- (2) Except as provided in Sections 63G-3-303 and 63G-3-304, when making, amending, or repealing a rule agencies shall comply with:
 - (a) the requirements of this section;
 - (b) consistent procedures required by other statutes;
 - (c) applicable federal mandates; and
 - (d) rules made by the department to implement this chapter.
- (3) Subject to the requirements of this chapter, each agency shall develop and use flexible approaches in drafting rules that meet the needs of the agency and that involve persons affected by the agency's rules.
- (4)
 - (a) Each agency shall file its proposed rule and rule analysis with the office.
 - (b) Rule amendments shall be marked with new language underlined and deleted language struck out.
 - (c)
 - (i) The office shall publish the information required under Subsection (8) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.
 - (ii) For rule amendments, only the section or subsection of the rule being amended need be printed.
 - (iii) If the executive director or the executive director's designee determines that the rule is too long to publish, the office shall publish the rule analysis and shall publish the rule by reference to a copy on file with the office.
- (5) Prior to filing a rule with the office, the department head shall consider and comment on the fiscal impact a rule may have on businesses.
- (6) If the agency reasonably expects that a proposed rule will have a measurable negative fiscal impact on small businesses, the agency shall consider, as allowed by federal law, each of the following methods of reducing the impact of the rule on small businesses:
 - (a) establishing less stringent compliance or reporting requirements for small businesses;
 - (b) establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
 - (c) consolidating or simplifying compliance or reporting requirements for small businesses;
 - (d) establishing performance standards for small businesses to replace design or operational standards required in the proposed rule; and
 - (e) exempting small businesses from all or any part of the requirements contained in the proposed rule.
- (7) If during the public comment period an agency receives comment that the proposed rule will cost small business more than one day's annual average gross receipts, and the agency had not previously performed the analysis in Subsection (6), the agency shall perform the analysis described in Subsection (6).
- (8) The rule analysis shall contain:
 - (a) a summary of the rule or change;
 - (b) the purpose of the rule or reason for the change;
 - (c) the statutory authority or federal requirement for the rule;

- (d) the anticipated cost or savings to:
 - (i) the state budget;
 - (ii) local governments;
 - (iii) small businesses; and
 - (iv) persons other than small businesses, businesses, or local governmental entities;
 - (e) the compliance cost for affected persons;
 - (f) how interested persons may review the full text of the rule;
 - (g) how interested persons may present their views on the rule;
 - (h) the time and place of any scheduled public hearing;
 - (i) the name and telephone number of an agency employee who may be contacted about the rule;
 - (j) the name of the agency head or designee who authorized the rule;
 - (k) the date on which the rule may become effective following the public comment period; and
 - (l) comments by the department head on the fiscal impact the rule may have on businesses.
- (9)
- (a) For a rule being repealed and reenacted, the rule analysis shall contain a summary that generally includes the following:
 - (i) a summary of substantive provisions in the repealed rule which are eliminated from the enacted rule; and
 - (ii) a summary of new substantive provisions appearing only in the enacted rule.
 - (b) The summary required under this Subsection (9) is to aid in review and may not be used to contest any rule on the ground of noncompliance with the procedural requirements of this chapter.
- (10) A copy of the rule analysis shall be mailed to all persons who have made timely request of the agency for advance notice of its rulemaking proceedings and to any other person who, by statutory or federal mandate or in the judgment of the agency, should also receive notice.
- (11)
- (a) Following the publication date, the agency shall allow at least 30 days for public comment on the rule.
 - (b) The agency shall review and evaluate all public comments submitted in writing within the time period under Subsection (11)(a) or presented at public hearings conducted by the agency within the time period under Subsection (11)(a).
- (12)
- (a) Except as provided in Sections 63G-3-303 and 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period under Subsection (11), nor more than 120 days after the publication date.
 - (b) The agency shall provide notice of the rule's effective date to the office in the form required by the department.
 - (c) The notice of effective date may not provide for an effective date prior to the date it is received by the office.
 - (d) The office shall publish notice of the effective date of the rule in the next issue of the bulletin.
 - (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is not filed with the office within 120 days of publication.
- (13)
- (a) As used in this Subsection (13), "initiate rulemaking proceedings" means the filing, for the purposes of publication in accordance with Subsection (4), of an agency's proposed rule that is required by state statute.

- (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the effective date of the statutory provision that specifically requires the rulemaking, except under Subsection (13)(c).
- (c) When a statute is enacted that requires agency rulemaking and the affected agency already has rules in place that meet the statutory requirement, the agency shall submit the rules to the Administrative Rules Review Committee for review within 60 days after the statute requiring the rulemaking takes effect.
- (d) If a state agency does not initiate rulemaking proceedings in accordance with the time requirements in Subsection (13)(b), the state agency shall appear before the legislative Administrative Rules Review Committee and provide the reasons for the delay.

Amended by Chapter 193, 2016 General Session

63G-3-302 Public hearings.

- (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule during the public comment period.
- (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or repeal of a rule if:
 - (a) a public hearing is required by state or federal mandate;
 - (b)
 - (i) another state agency, 10 interested persons, or an interested association having not fewer than 10 members request a public hearing; and
 - (ii) the agency receives the request in writing not more than 15 days after the publication date of the proposed rule.
- (3) The agency shall hold the hearing:
 - (a) before the rule becomes effective; and
 - (b) no less than seven days nor more than 30 days after receipt of the request for hearing.

Renumbered and Amended by Chapter 382, 2008 General Session

63G-3-303 Changes in rules.

- (1)
 - (a) To change a proposed rule already published in the bulletin, an agency shall file with the office:
 - (i) the text of the changed rule; and
 - (ii) a rule analysis containing a description of the change and the information required by Section 63G-3-301.
 - (b) A change to a proposed rule may not be filed more than 120 days after publication of the rule being changed.
 - (c) The office shall publish the rule analysis for the changed rule in the bulletin.
 - (d) The changed proposed rule and its associated proposed rule will become effective on a date specified by the agency, not less than 30 days or more than 120 days after publication of the last change in proposed rule.
 - (e) A changed proposed rule and its associated proposed rule lapse if a notice of effective date or another change to a proposed rule is not filed with the office within 120 days of publication of the last change in proposed rule.
- (2) If the rule change is nonsubstantive:
 - (a) the agency need not comply with the requirements of Subsection (1); and

- (b) the agency shall notify the office of the change in writing.
- (3) If the rule is effective, the agency shall amend the rule according to the procedures specified in Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-304 Emergency rulemaking procedure.

- (1) All agencies shall comply with the rulemaking procedures of Section 63G-3-301 unless an agency finds that these procedures would:
 - (a) cause an imminent peril to the public health, safety, or welfare;
 - (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
 - (c) place the agency in violation of federal or state law.
- (2)
 - (a) When finding that its rule is excepted from regular rulemaking procedures by this section, the agency shall file with the office:
 - (i) the text of the rule; and
 - (ii) a rule analysis that includes the specific reasons and justifications for its findings.
 - (b) The office shall publish the rule in the bulletin as provided in Subsection 63G-3-301(4).
 - (c) The agency shall notify interested persons as provided in Subsection 63G-3-301(10).
 - (d) The rule becomes effective for a period not exceeding 120 days on the date of filing or any later date designated in the rule.
- (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also comply with the procedures of Section 63G-3-301.

Amended by Chapter 193, 2016 General Session

63G-3-305 Agency review of rules -- Schedule of filings -- Limited exemption for certain rules.

- (1) Each agency shall review each of its rules within five years after the rule's original effective date or within five years after the filing of the last five-year review, whichever is later.
- (2) An agency may consider any substantial review of a rule to be a five-year review if the agency also meets the requirements described in Subsection (3).
- (3) At the conclusion of its review, and no later than the deadline described in Subsection (1), the agency shall decide whether to continue, repeal, or amend and continue the rule and comply with Subsections (3)(a) through (c), as applicable.
 - (a) If the agency continues the rule, the agency shall file with the office a five-year notice of review and statement of continuation that includes:
 - (i) a concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule;
 - (ii) a summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule; and
 - (iii) a reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any.
 - (b) If the agency repeals the rule, the agency shall:
 - (i) comply with Section 63G-3-301; and
 - (ii) in the rule analysis described in Section 63G-3-301, state that the repeal is the result of the agency's five-year review under this section.

- (c) If the agency amends and continues the rule, the agency shall comply with the requirements described in Section 63G-3-301 and file with the office the five-year notice of review and statement of continuation required in Subsection (3)(a).
- (4) The office shall publish a five-year notice of review and statement of continuation in the bulletin no later than one year after the deadline described in Subsection (1).
- (5)
 - (a) The office shall make a reasonable effort to notify an agency that a rule is due for review at least 180 days before the deadline described in Subsection (1).
 - (b) The office's failure to comply with the requirement described in Subsection (5)(a) does not exempt an agency from complying with any provision of this section.
- (6) If an agency finds that it will not meet the deadline established in Subsection (1):
 - (a) before the deadline described in Subsection (1), the agency may file one extension with the office indicating the reason for the extension; and
 - (b) the office shall publish notice of the extension in the bulletin in accordance with the office's publication schedule established by rule under Section 63G-3-402.
- (7) An extension permits the agency to comply with the requirements described in Subsections (1) and (3) up to 120 days after the deadline described in Subsection (1).
- (8)
 - (a) If an agency does not comply with the requirements described in Subsection (3), and does not file an extension under Subsection (6), the rule expires automatically on the day immediately after the date of the missed deadline.
 - (b) If an agency files an extension under Subsection (6) and does not comply with the requirements described in Subsection (3) within 120 days after the day on which the deadline described in Subsection (1) expires, the rule expires automatically on the day immediately after the date of the missed deadline.
- (9) After a rule expires under Subsection (8), the office shall:
 - (a) publish a notice in the next issue of the bulletin that the rule has expired and is no longer enforceable;
 - (b) remove the rule from the code; and
 - (c) notify the agency that the rule has expired.
- (10) After a rule expires, an agency must comply with the requirements of Section 63G-3-301 to reenact the rule.

Amended by Chapter 193, 2016 General Session